

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

George H. Kalberer,

Civil No. 13-1665 (PJS/FLN)

Plaintiff,

v.

William Palmer et al.,

**REPORT AND
RECOMMENDATION**

Defendants.

George H. Kalberer, *pro se*, for Plaintiff.
Brian S. Carter for Defendant William Palmer
Michael Miller for Defendants Hennepin County Medical Center (HCMC) and HCMC John Does.

This matter came before the undersigned United States Magistrate Judge on Plaintiff's motion for summary judgment (ECF Nos. 123 and 124)¹ and the Court's November 2, 2015 Order to show cause (ECF No. 127). This matter was referred to the undersigned for a Report and Recommendation pursuant to 28 U.S.C. § 636. Order, ECF No. 14. For the reasons set forth below, the Court recommends that Plaintiff's motion be **DENIED** and that his Complaint be **DISMISSED** for failure to prosecute.

The Court adopts its factual findings from its preceeding Orders. *See* ECF Nos. 121 and 127. Plaintiff George H. Kalberer was ordered to appear for his deposition on October 13, 2015, and to respond to Defendants' interrogatories by November 1, 2015. Order, ECF No. 121. After failing to comply with this Order, Plaintiff contacted the Court and filed a motion for summary judgment conceding that "[p]ursuant to adverse circumstances, time and distance Kalberer is forced to discontinue this case." *See* Mot. for Summ. J. 1, ECF Nos. 123, 124. Based on this representation,

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Although the motion has been docketed twice, it is clear to the Court that Plaintiff filed only one motion for summary judgment.

the Court ordered Plaintiff to show cause, in writing by December 1, 2015, why the case should not be dismissed for failure to prosecute. Order, ECF No. 127. To date, Plaintiff has not responded to any discovery requests, made any efforts to appear for his deposition, or complied with the Court's order to show cause.

Accordingly, based upon the foregoing and all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that Plaintiff's motion for summary judgment be **DENIED** (ECF Nos. 123 and 124) and Plaintiff's Complaint be **DISMISSED WITH PREJUDICE** for failure to prosecute pursuant to Rule 41 of the Federal Rules of Civil Procedure.

DATED: December 28, 2015

s/Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **January 11, 2016**, written objections that specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within fourteen (14) days after service thereof. All briefs filed under the rules shall be limited to 3,500 words. A judge shall make a de novo determination of those portions to which objection is made.

Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and cause to be filed by **January 11, 2016** a complete transcript of the hearing that took place on November 2, 2015.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.